



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-D-S-E-

DATE: MAR. 12, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, the coordinator of a school for bodyboarding and environmental awareness, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that he meets three of the six exceptional ability criteria and that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

### A. Exceptional Ability

As an environmental awareness project coordinator, the Petitioner asserts that he meets three of the exceptional ability evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Director determined that the Petitioner's membership in the Association of Environmental Engineering Professionals of Espirito Santo satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), which requires "[e]vidence of membership in professional associations." The record supports the Director's finding relating to this criterion. On appeal, the Petitioner maintains that he also meets the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F). For the reasons discussed below, the record supports a finding that the Petitioner satisfies these additional criteria.

The regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires "[a]n official academic record showing . . . a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." The record includes the Petitioner's bachelor's degree in environmental engineering from [REDACTED] (2014) and his official school transcript from that college's secretary of academic affairs. Accordingly, the Petitioner meets this criterion.

In addition, the Petitioner presented a March 2018 letter from his former employer, [REDACTED] (a mining corporation), indicating that he worked "full time" coordinating that company's environmental programs and community outreach activities (such as beach restoration projects) from 2004 until 2015. This letter demonstrates that he "has at least ten years of full-time experience" in his occupation and therefore he satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

As “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations” under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner provided letters from professional bodyboarders, environmental organizations, project collaborators, and company sponsors discussing the Petitioner’s [REDACTED] in Brazil and its beach restoration projects. In addition, the record includes media coverage of his work and certificates and declarations from the city of [REDACTED] issued in recognition of the Petitioner’s environmental service. We find this evidence sufficient to document that the Petitioner’s achievements and significant contributions to the field (through his development of a school for bodyboarding and environmental awareness) have been recognized by peers, governmental entities, and professional and business organizations. Accordingly, he meets the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The record adequately demonstrates that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification. He therefore has established eligibility for the underlying EB-2 visa classification.

#### B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. At the time of filing, the Petitioner asserted that he intends to work “as the Director and Founder of a school that combines the teaching of ocean sports with the teaching of ocean ecology and environmental sustainability.”

With respect to his proposed endeavor, the Petitioner offered a project plan indicating that he seeks to establish an [REDACTED] in [REDACTED] Hawaii. He stated that he intends to develop “an educational program through the practice of bodyboarding, helping people learn more about our environment and sport.” The Petitioner further explained that the mission of his educational program is to “[i]nform individuals to transform them in [*sic*] citizens that collaborate to [*sic*] the sustainability and improvement of their community.”

The Petitioner also provided letters of support discussing how the Petitioner’s [REDACTED] will improve children’s environmental education in the community.<sup>3</sup> For example, [REDACTED] Director of Advancement and Manager for [REDACTED] (a charitable benefit race for children with special needs), asserted that “[p]rograms like the [REDACTED] can have significant impact on many generations to come because the values they instill in children now will resonate for their entire lives and continue to positively impact their mindset and surroundings for years to come.” In addition, [REDACTED] founder of [REDACTED] an ocean sports event for children with special needs, indicated that [REDACTED] is a great asset to our entire community in

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<sup>3</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

Hawaii, making our land safer and our people eager to care for the ocean. Children need to be ocean smart with living on an island, and [REDACTED] has a formula that inspires many kids . . . .”

In addition, the record includes an analysis from Pew Charitable Trusts discussing issues that drive ocean conservation, webpages describing Earthjustice (a non-profit public interest organization) and its initiatives to protect ocean ecosystems, and information about World Oceans Day and problems affecting the world’s oceans. Regarding the first prong of the *Dhanasar* framework, while we find that the Petitioner’s proposed work to operate an environmental school of bodyboarding has substantial merit, for the reasons discussed below, the evidence is not sufficient to show this endeavor’s national importance.

On appeal, the Petitioner asks that we “look beyond the unconventional and unprecedented nature of this project and see its universal benefit, national importance and potential to benefit the U.S. while creating jobs.” He provides a personal statement indicating that he commenced the project in Hawaii with the “hope to replicate the model in other coastal areas of the U.S.” The Petitioner further states that he seeks “to create jobs and provide a program that will benefit young people here and the environment just as it has in Brazil.”

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the statements from the Petitioner reflect his intention to offer bodyboarding training and environmental education to participants in his school’s programs, he has not presented sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In the same way that *Dhanasar* finds that a classroom teacher’s proposed endeavor is not nationally important because it will not impact the field more broadly<sup>4</sup>, we find that the Petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond his school and its participants to impact the field more broadly than his specific programs. Nor has he shown that his operation of [REDACTED] would have broader implications in his sport.

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<sup>4</sup> See *Id.* at 893.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While his project plan lists “Human Resources to Start” as “3 Bodyboarding instructors” and “1 Instructor of environment discipline,” the record does not include sufficient information or evidence regarding any projected job growth attributable to his proposed school. The Petitioner has not shown that benefits to the regional or national economy resulting from this project would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-D-S-E-*, ID# 2360141 (AAO Mar. 12, 2019)